

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-210877; B-210877.2 DATE: September 2, 1983

MATTER OF: Torrington Company, a division of
Ingersoll-Rand Company

DIGEST:

1. Protest alleging that awardee was not properly qualified as an approved source, where procurement is restricted to approved sources only, is denied since record shows that awardee submitted data in compliance with the RFP which was fully evaluated by appropriate technical personnel. Under these circumstances, there is no basis to object to the qualification of awardee as an approved source.
2. Protest alleging unfair treatment because protester was given no opportunity to submit an offer on newly qualified item which was not identical to item specified in the RFP is untimely since it was not raised until more than 10 working days after protester learned of basis of protest.

The Torrington Company (Torrington), a division of Ingersoll-Rand Company, protests the award of a contract to Sargent Industries/Kahr Bearing Division (Sargent) under request for proposals (RFP) FD2040-83-55362 issued by the McClellan Air Force Base, California. The solicitation requested offers for 300 cam followers described in the schedule by General Dynamics part number C4307.

We deny the protest in part and dismiss in part.

The procurement was conducted in accordance with the Department of Defense (DOD) High Dollar Spare Parts Breakout Program and was restricted to approved sources only. However, provision M-2 of the RFP permitted other firms to qualify provided they presented sufficient data to allow the Government to evaluate the acceptability of the offered item.

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The RFP identified Torrington as the sole qualified and approved vendor. Sargent submitted a proposal which offered to provide an equivalent part which differed from the item listed in the RFP. Torrington alleges that Sargent's item has not undergone sufficient testing in order to allow the Air Force to qualify Sargent as a new source. In addition, Torrington contends that it was not treated fairly since it was given no opportunity to submit an offer on the newly qualified item.

The Air Force indicates that Sargent submitted engineering data and drawings which were fully evaluated by appropriate technical personnel. It was concluded that Sargent was a fully qualified source and an engineering change order was issued officially establishing Sargent as a new source. Although acknowledging that the contracting officer should have amended the RFP to add Sargent as a new source and to provide an opportunity for revised offers, the Air Force argues that Torrington's allegations in this respect are untimely and, in any event, Torrington was not prejudiced by the Air Force's oversight.

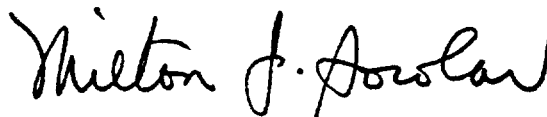
At the outset, we note that the contracting agency has the primary responsibility for determining its minimum needs and for drafting requirements which reflect those needs. Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339. Further, we have stated that the need for testing to determine whether an item fulfills those needs and the time involved in connection therewith is generally a matter within the competence of the procuring agency and the agency's position will not be disturbed in the absence of clear evidence indicating the position is unreasonable. D Square Engineering Company, B-204998, April 6, 1982, 82-1 CPD 315. Moreover, whether an offeror has presented sufficient information to convince the cognizant procuring activity that the proffered item meets the agency's minimum needs is essentially a technical judgment committed to an agency's discretion. Delta Scientific Corporation, B-184401, August 3, 1976, 76-2 CPD 113.

Accordingly, it is clear that the Air Force could take action to amend or change the RFP to satisfy its requirements. Further, our review of the record indicates that Sargent submitted drawings, test reports and data in compliance with provision M-2 of the RFP. The Air Force engineers evaluated the material and determined that the item offered by Sargent was equal to or better than the item offered by Torrington. In these circumstances, we find no

basis to object to the qualification of Sargent as an approved source.

Finally, we agree with the Air Force that Torrington's allegation that it should have been given an opportunity to submit a revised offer was untimely raised. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1983), protests should be filed not later than 10 days after the basis for the protest is known or should have been known. It is clear that Torrington learned that the Air Force was accepting an item which was not identical to that specified in the RFP and objected to the Air Force on March 22, 1983, following a telephone conversation with various Air Force personnel. Torrington forwarded a memo memorializing this conversation to our Office by letter of April 6, 1983, which we received on April 11, 1983. Since Torrington first raised the issue more than 10 days after March 22, it is untimely and we will not consider it on its merits.

The protest is denied in part and dismissed in part.



Acting Comptroller General
of the United States